Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services	)))	**CC Docket No. 94-54**

To: The Commission

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group ("RTG"), by its attorneys and pursuant to § 1.415 of the Commission's Rules, hereby respectfully submits these Comments in response to the Third Notice of Proposed Rule Making ("*Third NPRM*"), released by the Federal Communications Commission ("FCC" or "Commission") on August 15, 1996, in CC Docket No. 94-54. These Comments represent the concerns of small and rural wireless telecommunications providers who will be adversely affected if the Commission requires providers of Commercial Mobile Radio Service ("CMRS") to offer automatic roaming services.

I. STATEMENT OF INTEREST

RTG is a group of concerned rural telephone companies who have joined together to promote the efforts of all rural telephone companies to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and under-served parts of the country. RTG especially advances the interests of rural telephone companies in wireless technologies. RTG members include CMRS licensees and applicants for CMRS licenses. If the Commission were to regulate automatic roaming, RTG and its members would be directly affected. Accordingly, RTG has a vested interest in the outcome of this proceeding.

II. BACKGROUND

In the *Third NPRM,* the Commission seeks comment on whether it should act to regulate the provision of "automatic" roaming services (*i.e.,* "carrier-to-carrier" roaming), whereby a roaming subscriber can make or receive a call without taking any action other than tuning on the handset. Such automatic roaming requires a contractual relationship between the home system and the host system on which the subscriber is roaming and requires the host system to identify and contact the home system in order to verify the subscriber's status. In many instances, carriers must resolve complex technical issues before they can provide automatic roaming service.

III. COMMENTS

A. THERE IS NO JUSTIFICATION FOR DEPARTING FROM CONGRESS' AND THE COMMISSION'S PRO-COMPETITIVE, DEREGULATORY APPROACH TO WIRELESS SERVICES.

As the Commission has noted repeatedly, by enacting the Telecommunications Act of 1996 ("1996 Act"), Congress intended to create a "pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[1] Especially in the area of wireless technologies, the Commission historically has allowed market forces rather than regulation to mold new wireless technologies and services.

In the *Third NPRM,* the Commission seeks comment on whether regulating automatic roaming services would be inconsistent with this deregulatory framework, and, if so, whether such a departure is justified. As RTG will demonstrate, any requirement forcing CMRS providers to enter into roaming agreements would be needlessly premature, inconsistent with current deregulatory policies and unnecessary for the development of competitive roaming

[1] *Third NPRM* at 16 (citing S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess. 1 (1996)).

services. Therefore, there is no justification for deviating from the Commission's current deregulatory policy.

1. The Commission Must Rely on Market Forces Before Imposing Automatic Roaming Requirements.

Under the pro-competitive, deregulatory environment which Congress contemplates, the Commission first should rely on market forces before resorting to government intervention and regulation. Where market forces are sufficient to promote competition and new and innovative services, the Commission should not intercede, but rather should refrain from regulation unless and until the marketplace proves ineffective.

Only in light of persuasive evidence that there is wide-spread anticompetitive behavior with respect to CMRS roaming, should the Commission impose industry-wide regulation. Under Congress' and the Commission's deregulatory posture for wireless services, a theoretical danger that a few companies might engage in anticompetitive behavior is not enough to justify abandoning a market-oriented posture.

In the *Second Report and Order* in this proceeding, the Commission wisely refrained from imposing automatic roaming obligations, choosing instead to monitor developments in the industry. The Commission should maintain this position. It can continue to monitor the industry, and if necessary, institute a rulemaking proceeding at a later date.

Currently there is still far too little evidence of anti-competitive behavior to justify the imposition of costly and complex government regulation. For example, only a small number of Personal Communications Services ("PCS") systems are operating or beginning beta testing. Moveover, as the Commission has noted, most roaming occurs in adjacent markets.[2] Because PCS service areas are substantially larger than cellular service areas, it is not clear

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[2] *Third NPRM* at 13.

from the evidence what kind of roaming PCS licensees will need to offer or whether they will even need to offer roaming at all in order to be competitive.

As a representative of rural telephone companies with small cellular systems and a desire to enter new services such as PCS, RTG is sensitive to the Commission's concern that new entrants and small providers may be shut-out of roaming arrangements by large national CMRS providers. RTG certainly would supply the Commission with evidence if RTG's members experienced such behavior. This has not been the case however. Nor in a competitive environment does RTG anticipate that it will be the case. Absent evidence of widespread abuse, an industry-wide rule is unnecessary. The Commission would better serve the public interest by resolving individual roaming complaints under § 208 of the Communications Act of 1934, as amended.

2. An Automatic Roaming Requirement Is Inconsistent with The Commission's General Policy of Allowing Market Forces to Shape Wireless Services.

Pursuant to the passage of the 1996 Act, the Commission has continued to increase the power that market forces exert on the telecommunications industry by allowing CMRS providers to offer ever more innovative and flexible services to a broader range of the American public.[3] Regulation of automatic roaming would be completely inconsistent with this pro-competitive, deregulatory framework as it would essentially require the Commission to mandate what automatic roaming services a carrier provides and to whom.

While the Commission has imposed some additional regulations on CMRS providers,

[3] *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services,* First Report and Order, WT Docket No. 96-6, (rel. August 1, 1996).

most notably the obligation to allow resale during a transitional period, it did so in order to "hasten the arrival of competition by speeding the development of new competitors" to each market.[4] By requiring CMRS providers to allow resale, the Commission relied on its experience in the cellular industry and determined that resale was a viable method of speeding competition to each market "at a relatively limited cost."[5] By requiring carriers to provide automatic roaming however, the Commission would add no new competitors to the market and the cost would be high relative to the benefits.

The Commission's requirement that CMRS systems provide service to individual manual roamers also is distinguishable from a requirement that CMRS licensees provide automatic roaming. Individuals roaming outside their home systems have no power to negotiate with or force a host system to provide service, and there may be little economic incentive for the host system to offer service. CMRS operators by contrast have both power and incentive to negotiate roaming agreements with each other. Indeed, in the cellular industry market forces drove the creation of extensive roaming networks and services without government intervention. Accordingly, market forces will continue to ensure that CMRS providers reach such agreements voluntarily.

B. REGULATION OF AUTOMATIC ROAMING WOULD DISTORT MARKET FORCES AND BURDEN THE COMMISSION AND RURAL CMRS PROVIDERS.

In the *Third NPRM*, the Commission seeks comment on whether a CMRS carrier that

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4 *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services,* First Report and Order, CC Docket No. 94-54 (rel. July 12, 1996) ("*Resale Order*").

5 *Id.* Despite the fact that the Commission views resale as a means of adding competition in each market, the Commission placed a sunset on the obligation to allow resale.

enters into a roaming agreement with another carrier should be required to offer like roaming agreements to other "similarly situated" providers.[6] As RTG will explain, such a requirement would: (1) dampen competition and innovation; (2) be difficult to administer; and, (3) adversely affect small and rural CMRS providers.

1. Roaming Is an Important Competitive Element Which the Commission Would Distort by Imposing an Automatic Roaming Rule.

Driven by customer demand, many cellular companies compete on the basis of the cost of and extent of their roaming services. Such carriers and their competitors have a strong incentive to develop new and innovative roaming services and to reduce the cost of those roaming services. By requiring carriers to enter into roaming agreements pursuant to a nondiscrimination requirement, the Commission will stifle this important source of competition and innovation. Carriers will no longer have the incentive to invest time and resources developing and negotiating competitively attractive roaming services for their customers if another carrier can shadow their efforts and demand the same package. Nor will providers have the incentive to invest in new technology to expand their roaming coverage areas and services.

2. An Automatic Roaming Rule Would Be Difficult to Administer.

In light of the FCC's flexible service approach to CMRS, the sheer number of different kinds of providers and services alone makes a roaming requirement administratively infeasible. As Nextel Communications, Inc. ("Nextel") noted in response to the *Second Notice of Proposed Rulemaking* in this proceeding, "The CMRS marketplace is likely to include

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6 *Third NPRM* at 14. If the Commission does impose such a rule, RTG requests that the Commission specifically acknowledge that rural CMRS providers are not similarly situated to providers operating in urban areas. See discussion in section B.3, *infra*.

numerous providers, operating on widely disparate frequencies, offering various types of services on a variety of technology platforms."[7] With such a broad array of allowable CMRS services and technologies it is unclear how the Commission intends to apply the proposed requirement that roaming agreements be offered to "similarly situated" providers. In addition, the service areas of cellular, PCS and Covered Specialized Mobile Services ("SMR") licenses are substantially different in geographic size. Adoption of the vague standard proposed by the Commission will create uncertainty for CMRS licensees, making compliance difficult for such licensees and enforcement difficult for the Commission.

3. An Automatic Roaming Rule Would Harm Small and Rural CMRS Providers.

Small and rural CMRS providers generally have strong incentives for seeking and negotiating automatic roaming agreements in order to offer roaming as part of their package of services. But there are situations in which requiring a small provider to enter into a roaming agreement or dictating the terms upon which the rural provider must offer service, would be harmful to the small provider and would have anticompetitive effects.

For example, rural CMRS providers should not be restricted by the terms dictated by large CMRS providers. The level of compensation suitable to a large CMRS provider with multiple licenses and a small margin, may not be sufficient to compensate a rural telephone company. If forced to accept what is in effect a blanket roaming agreement—because the contracting carrier must offer the same terms to all partner carriers—rather than negotiate its own, a rural CMRS provider may decline to offer roaming in a given area. Such a result is clearly contrary to the public interest.

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[7] Nextel Comments at 5.

The administrative costs of negotiating and maintaining numerous roaming agreements also disproportionately impact rural providers. Where a rural provider derives only a small percentage of revenue from roaming, it may refrain from offering automatic roaming at all rather than incur the expense of multiple, marginal contracts.

In certain markets the size of a carrier's roaming coverage may not be a significant factor in a customer's decision to use a particular provider. In such cases the cost of negotiating and administering numerous roaming agreements may not be justified, and the provider should be able to refrain from entering into costly agreements.

Rural CMRS providers also should be able to offer more favorable terms to a geographically proximate provider. As the Commission has noted, most roaming occurs in adjacent markets. Two rural cellular providers in adjacent rural towns should be able to enter into an agreement to allow their customers to roam freely at a reduced rate between the two systems. This is of benefit to their customers. Those same providers should not necessarily be required to offer the same roaming terms to a competitive system on the other side of the state, or in a large city in another state.

Similarly, many small rural providers might contract with each other in order to compete effectively against a larger competitor. Such competitive gains would be negated if the large competitor could force the small carriers to enter into agreements.

A rural CMRS carrier also should be able to decline to enter into roaming agreements with other facilities based carriers in its home market (*i.e.*, "in-region" roaming).[8] For

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[8] The Commission would create a regulatory quagmire if it required carriers to enter into roaming agreements and then tried to carve-out exceptions to such a requirement. Given the different geographic scope of cellular, PCS and Covered SMR licenses, it would be extremely difficult to craft and enforce a rule prohibiting in-region roaming. It is better for the Commission to let carriers, driven by market forces, determine with whom they contract.

example, in many rural areas adjoining a major city, workers commute from their homes in the country to work in the city. Company B1, the B-side cellular provider in such a Rural Statistical Area ("RSA") might negotiate a favorable automatic roaming agreement with B2, the B-side licensee in the adjoining Metropolitan Statistical Area ("MSA"). Under a mandatory roaming rule, Company A, a large cellular provider and the A-side licensee of *both the RSA and MSA*, could force the rural company B1 to enter into a roaming agreement.

Under this scenario, a worker returning home at night might initiate a call in the city by roaming on Company A's system, and during the continuation of the call, that caller would continue to roam on A's system even once the caller entered B1's service area. Not only would this deny B1 the revenue of the call, but it would also anger B1's customer because the customer would incur roaming charges while in his or her home area.

B1 would want to encourage its customers to roam on B2's system, not A's system, so that B2 could hand-off calls once B1's customers entered B1's service area. Although Companies B1 and B2 would be harmed by a requirement that they enter into an automatic roaming agreement with Company A, they *would* want to encourage their customers to roam *on each other's* systems so that they could effectively compete with the larger footprint of Company A's system.

Finally, carriers should be able to protect themselves and their customers from fraud and from other carriers that charge excessive roaming charges, *i.e.*, "roaming traps." Specifically, a carrier should be able to decline to provide automatic roaming service to another carrier whose home service area is subject to excessive fraud or whose roaming rates are abusively high.

IV. CONCLUSION

Market forces will drive the creation of innovative and competitive roaming services. Carriers have strong incentives to enter into roaming agreements and their customers reap the benefits of innovation and competition in roaming services. The Commission should allow these market forces to operate before intervening with regulation. Currently, there is simply no justification for deviating from the deregulation of wireless services mandated by Congress. The imposition of an automatic roaming rule would have anticompetitive effects, would be difficult to administer and would unduly burden small and rural CMRS systems.

Accordingly, RTG respectfully urges the Commission to refrain from regulating automatic roaming services at this time.

Respectfully submitted,

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October 4, 1996

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